

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. M.A. 350/00429/2014

O.A. 350/00924/2014

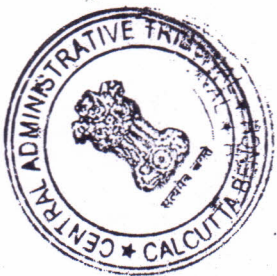
Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

Sri Dhanagopal Mukherji,  
Son of Late Brojogopal Mukherjee,  
Aged about 59 years,  
Working as SDE Officer (Architect),  
In the Office of the Chief Architect,  
Bharat Sanchar Nigam Limited,  
West Bengal Telecom Circle,  
Having office at Door Sanchar Bhawan,  
2/5A, Judges Court Road,  
Kolkata - 700 027  
And residing at 11, Salimpur Lane,  
P.S. Garfa, Calcutta - 700031.

..... Applicant.

Versus

1. Bharat Sanchar Nigam Limited,  
Service upon the Chairman-cum-Managing  
Director,  
Corporate Office, 10<sup>th</sup> Floor,  
Chandralok Building, 36, Janpath,  
New Delhi - 110001.
2. The Assistant General Manager (Personnel-I),  
Bharat Sanchar Nigam Limited,  
Corporate Office, Personnel-I Section,  
Bharat Sanchar Bhawan, 4<sup>th</sup> Floor, Janpath,  
New Delhi - 110001.
3. The Chief General Manager,  
West Bengal Telecom Circle,  
Bharat Sanchar Nigam Limited,  
1, Council House Street (2<sup>nd</sup> Floor),  
Kolkata - 700001.



CA/BSNL/KOL  
No. 232  
Dated. 16-4-15

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4. The Additional General Manager (Architect),  
Bharat Sanchar Nigam Limited,  
Corporate Office, Architectural Wing,  
Room No.37, I.R. Hall, Eastern Court,  
Janpath,  
New Delhi - 110 001.
5. The Chief Architect,  
West Bengal Telecom Circle,  
Bharat Sanchar Nigam Limited,  
Having Office at Door Sanchar Bhawan,  
2/5A, Judges Court Road,  
Kolkata - 700027.
6. The Union of India,  
Service the Secretary,  
Ministry of Communication and Information  
Technology,  
Department of Communication,  
12<sup>th</sup> Floor Sanchar Bhawan, 20, Ashoka Road,  
New Delhi - 110 001.

..... Respondents.

For the Applicant : Mr. A.K. Bairagi, Counsel  
Mr. A.K. Chattopadhyay, Counsel

For the Respondents : Ms. G. Mukherjee, Counsel  
Mr. S.K. Ghosh, Counsel

Order dated :

07/04/2015

ORDER

Per Mr. R. Bandyopadhyay, Administrative Member:

The present O.A. has been filed by Shri Dhanagopal Mukherji working as SDE (Architect) in the Office of Chief Architect, Bharat Sanchar Nigam Limited, West Bengal Telecom Circle under Section 19 of the AT Act, 1985



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seeking the following reliefs:-

- "a) An order quashing and/or setting aside the impugned order No. CA/BSNL/Kol/5(1)/2009/250 dated 18.6.2014 issued by the Chief Architect, BSNL, Kolkata Circle forthwith;
- b) An order of stay by directing the Respondent Authorities not to deduct any amounts from the pay of the applicant which he was getting prior to June, 2014 as so-called recovery.
- c) An order of stay of operation of the impugned order dated 18.6.2014 by which the pay of the applicant has been reduced on and from 30.6.2014 pay of June, 2014 of the applicant;
- d) An order directing the respondent authorities to review the case of the applicant in true and exact meaning of the guidelines / orders issued by the Department of Telecom as well as the BSNL in respect of implementation of the ACP Scheme keeping in view that as 400 and more similarly situated employees of BSNL are enjoying the same pay scale and financial benefits;
- e) Any further order and/or orders as this Hon'ble Tribunal may deem fit and proper."

2. The brief factual position of the case as pleaded, are as follows:-

That the applicant entered into the employment as an Architectural Assistant Gr. II in the Department of Telecommunication, Government of India on 1.7.1980. Later the department of Telecommunication had formed a new company namely, BSNL on 1.10.2000 to look after the field work of Telecommunications. The applicant who had given an option on 1.10.2000 for permanent absorption in BSNL was absorbed, as such, in BSNL from 1.10.2000. The applicant mentions that he has got financial upgradations under ACP Scheme vide order dated 7.4.2008 and was subsequently promoted as SDE vide order dated 19.6.2008 (Annexure A-8). While he was working in Guwahati Circle on 4.4.2013 the applicant was transferred to



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Calcutta Circle in the grade of SDE (Arch.) in the pay scale of Rs. 29,100-54,500/-. The applicant was thus enjoying the upgraded pay scale of SDE (Arch.) along with other 9 persons of Guwahati Telecommunication Circle and also as many as 400 such person in BSNL. The applicant claims that suddenly the impugned order dated 18.6.2014 which is the rectification order issued by the BSNL has reduced the basic pay of applicant from Rs. 43,350 to Rs. 37,710/- and a statement of overdrawn amount has also been asked to be calculated by the concerned officers of the BSNL. The applicant also mentions that from the month of June, 2014 the applicant's pay has been reduced and later by an order dated 19.8.2014 placed at M.A. - 3 the order for recovery for the extra amount drawn has been issued by the concerned authority. Challenging this impugned order of pay reductions and taking the grounds that the rectification order of his earlier pay is discriminatory and bad-in-law, the applicant has filed the present O.A. with the reliefs as mentioned above.

3. The applicant has later filed an M.A. No. 350/00429/2014 challenging the order of recovery dated 19<sup>th</sup> August, 2014 and seeking for its stay.

4. We have heard the Ld. Counsels for both sides at length and perused all the documents submitted carefully. In order to adjudicate the case, we have asked for the respondent exact break-up and date-wise sequence of different scales given to the applicant.



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| <b>List of Dates</b> |   |
|----------------------|---|
| 1.7.1980             | Appointed as Architectural Assistant Gr. II in the scale of Rs. 425-700/-   |
| 29.1.1998            | Regular Promotion as AA Gr. I in the scale of Rs. 5500-9000/-   |
| 1.10.2000            | Absorption in BSNL by Order dated 26.7.2004   |
|                      | 1 <sup>st</sup> IDA Scale of Rs. 7830-12430/- granted   |
| 1.12.2001            | AA Gr. II and Gr. I merged and re-designated as JTO (Arch.) by order dated 27.3.2002 in the IDA Scale of Rs. 9850-14600/-   |
| 1.10.2006            | First financial upgradation/2 <sup>nd</sup> ACP by Office Order dated 7.4.2008 in the IDA Scale of Rs. 11875-17275  |
| 19.6.2008            | Promoted from JTO (Arch.) to SDE (Arch.) in the same pay scale of Rs. 11,875-17,275/-   |
| 16.12.2010           | Order by Assam Telecom Circle - 2 <sup>nd</sup> IDA granted to 9 employees of Civil Wing and two from Architectural Wing Pay Scale of Rs. 9,850/-14600/- as JTO (Arch.).<br>-Applicant was wrongly placed in the pay Scale of Rs. 14,500-18700/-.<br>-His correct pay scale should have Rs. 13,000-18,250/- w.e.f. 1.7.2009 i.e. 2 <sup>nd</sup> IDA after 5 years. |

5. The main cause of the dispute has its genesis on an order dated 16.12.2010, issued by the office of the CGM, BSNL Assam Telecom Circle which has shown the **pay Scale of Rs. 14,500-18700/-**. For the applicant along with 10 other persons, (Annex A9), which was considered as erroneously given and as such withdrawn by the impugned order CA/BSNL/Kol/5(1)/2009/250 dated 18.6.2014 issued by the Chief Architect,



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BSNL, Kolkata Circle .

The grounds taken by the applicant are that the respondents authorities cannot take any action for rectifying the pay scale of the applicant which has been extended **to him since 16.12.2010** along with other similarly placed employees of BSNL, by applying this only to him and not in general.

6. The applicant further contended that the respondent authorities ought to have considered his 24 years regular service and is entitled to the said financial upgradation in 2<sup>nd</sup> ACP Scheme on and from 16.8.2004 as the same benefits have been extended to other similarly placed executives in BSNL,. But the due benefit given to him has been withdrawn/rectified by impugned order and actions of the respondent authorities are discriminatory and bad-in-law. Since the applicant was on the verge of retirement any reduction of pay or taking back the pay already drawn by him or recovery of the payment already drawn by him will be very harsh and the BSNL authorities rectifying the pay scale of the applicant by reducing the same from Rs. 43,350/- to Rs. 37,710/- without any valid and cogent reason particularly when he is on the verge of superannuation. The applicant also mentions that it is a well settled principle of law that if a person enjoys certain benefits which has been extended to him by the employer by following the terms and conditions of a promotional Scheme and admittedly there is no misrepresentation and/or latches on the part of the employee concerned that cannot be deducted subsequently by means of any plea and on that settled

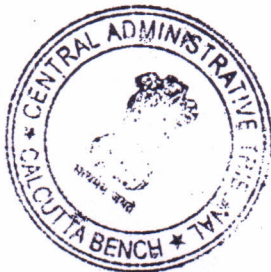


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principle of law the impugned order is bad and liable to be set aside.

7. To the contrary the respondents have mentioned that by an order dated 26.7.2004 the applicant was permanently absorbed in BSNL w.e.f. 1.10.2000. After being absorbed in BSNL, the post of Architectural Assistant Gr. II and Gr. I were merged and designated as JTO (Arch.) w.e.f. 1.12.2000 and the pay scale was revised accordingly w.e.f. 1.12.2000 in IDA pay scale of Rs. 9,850-14,600/- by an order dated 7.4.2008 (Annexure R-5). The applicant who was posted as JTO (Arch.) in the pay scale of Rs. 9850-14600/- got his first financial upgradation w.e.f. 1.10.2006 in the pay scale of Rs. 11875-17275/- by office order dated 7.4.2008 issued by the Dy. General Manager (Admn.), O/o the Chief G.M. Telecom, W.B. Circle, Kolkata (Annexure R-5). The applicant thereafter was promoted from JTO (Arch.) to SDE (Arch.) on regular basis in the same IDA scale of Rs. 11875-17275/- on and from 16.8.2004 when the factual position is that the applicant was designated as JTO (Admn.) in the pay scale Rs. 9850-14600/- and instead promoted him to the next scale of Rs. 11875-17275/- he was placed in the pay scale of Rs. 14500-18700/-. The order dated 16.12.2010 is placed at Annexure R-7. The respondents further added that in the Memo No. 10.7.2013 the BSNL Corporate Office issued clarifications regarding grant of financial upgradation under ACP Scheme in case of JTO (Arch.). The respondents contended that;

“ It may be relevant to state that by Memo dated 10<sup>th</sup> July, 2013, the



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BSNL Corporate Office issued clarification regarding grant of financial upgradation under ACP Scheme/time-bound IDA pay scale upgradation in case of JTO (Arch.). It was explained that prior to 1.12.2001 i.e., prior to introduction of time bound IDA pay scale upgradation policy in BSNL, the hierarchy was as follows:-

|                       |                    |                 |
|-----------------------|--------------------|-----------------|
| Arch. Asstt. Gr. - II | Arch. Asstt. Gr. I | Asst. Architect |
| (5000-8000)           | (5500-9000)        | (7500-12000)    |

But after absorption in BSNL, the following hierarchy would be followed w.e.f. 1.12.2001:-

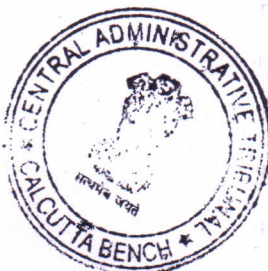
|              |                |                |               |
|--------------|----------------|----------------|---------------|
| JTO (Arch.)  | SDE/AE/(Arch.) | Sr. SDE(Arch.) | Architect     |
| (9850-14600) | (11875-17275)  | (13000-18250)  | (14500-18700) |

**(Annex-R8).**

The Respondents further mentioned that in pursuance of Memo dated 10.7.2013 issued by the Corporate Office and subsequent orders in continuation thereof, Order dated 18.6.2014 was issued for setting right the anomaly of pay as had happened in the Order dated 16.12.2010 (Ann. R-7 herein). Simultaneously Orders dated 28.7.2014 and 19.8.2014 were passed by recovering a total sum of Rs. 8,09,499/- from the applicant which was wrongly paid to him, by deducting a sum of Rs. 50,000/- from the monthly salary of the applicant for the next six months of his service and the rest amount from his leave encashment at the time of his retirement.

**( Annex R-9, R-10 & R-11)**

8. We have considered the case in its entirety. We have noted that by an order dated 16.12.2010, the office of the CGM, BSNL Assam Telecom Circle



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has given the following orders in respect of 11 persons.

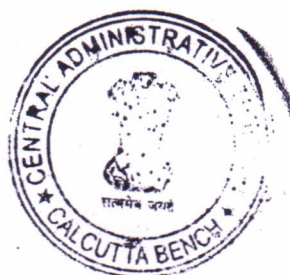
No. STES-4/50/Time Bound/Pt-IV/Loose/28 Date of Guwahati 16.12.2010

| Sl.No | Name of Officer (Sri/Smt/Md) | Designation | Present working SSA/Units | Pay Scale on upgradation | Date of eligibility for 1 <sup>st</sup> upgradation under 2 <sup>nd</sup> ACP Scheme |
|-------|------------------------------|-------------|---------------------------|--------------------------|--|
| I     | II                           | III         | IV                        | V                        | VI   |
| 1     | Utpal Saikla                 | SDE(Civil)  | Nagaon                    | 14500-350-18700          | 15.5.2003  |
| 2     | Hanif Ali                    | SDE(Civil)  | Guwahati                  | 14500-350-18700          | 16.5.2003  |
| 3     | Shyamal Kr. Das              | SDE(Civil)  | Silchar                   | 14500-350-18700          | 19.7.2004  |
| 4     | Pradip Kr. Goswami           | SDE(Civil)  | Silchar                   | 14500-350-18700          | 11.8.2004  |
| 5     | J.S. Bhattacharjee           | SDE(Civil)  | Silchar                   | 14500-350-18700          | 20.8.2004  |
| 6.    | Girish Ch. Das               | SDE(Civil)  | Guwahati                  | 14500-350-18700          | 1.8.2004   |
| 7.    | Mridul Busan Deb             | SDE(Civil)  | Jorhat                    | 14500-350-18700          | 8.8.2004   |
| 8.    | Mihir Roy                    | SDE(Civil)  | Guwahati                  | 14500-350-18700          | 27.11.2003   |
| 9.    | Prafulla Kr. Salkia          | SDE(Civil)  | Guwahati                  | 14500-350-18700          | 1.8.2004   |
| 10.   | D.G. Mukherjee               | SDE(Arch)   | Guwahati                  | 14500-350-18700          | 16.8.2004  |
| 11.   | M.A.K. Zai                   | SDE(Arch)   | Guwahati                  | 14500-350-18700          | 16.8.2004  |

9. In the office order dated 8.6.2014 the detailed information of Dhanagopal Mukherjee has been given in concurrence with the IFA of this office.

No. CA/BSNL/KOL/5(1)/2009/250

Dated at Kol-27, the



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18.6.2014

OFFICE ORDER

In pursuance of the directions issued by BSNL Corporate Office, Architectural Wing, New Delhi, vide No. 106-08/2013-Arch/126 dated 10.7.2013 and further Letter No. 112-1/2014-Arch/296 dated 16.4.2014 and subsequent approval of the Chief General Manager, West Bengal Telecom Circle, Kolkata dated 28.5.2014, the Pay of Shri Dhanagopal Mukherji, SDE (Arch), HRMS No. 198010883, is hereby ordered for rectification; to set right the anomaly incorporated in the Office Order No. STES-4/50/Time Bound/PT-IV/Loose/28 dated 16.12.2010 of the O/o. the Chief General Manager, BSNL, Guwahati, in the following orders:-

| Sl. No. | Particulars   | : | Detailed information                         |
|---------|---|---|--|
| 1.      | Name of the Official/Designation  | : | Shri Dnanagopal Mukerji, SDE(Arch.)          |
| 2.      | Date of completion of 24 years of service   | : | 30.6.2004                                    |
| 3.      | Designation on the date of 2 <sup>nd</sup> Financial Upgradation under ACP Scheme                         | : | JTO (Arch)                                   |
| 4.      | Date of effect of upgraded scale  | : | 01.07.2004                                   |
| 5.      | Scale of Pay prior to up-gradation  | : | Rs. 9850-250-14600/-                         |
| 6.      | Scale of pay on upgradation   | : | Rs. 11875-300-17275/-                        |
| 7.      | Basic Pay on the scale of (5) above as on the date of completion of 24 years of service                   | : | Rs. 11,100/-                                 |
| 8.      | Pay fixed on upgraded scale of (6) above with effect from 01.07.2004                                      | : | Rs. 11,875/-                                 |
| 9.      | Pay revised on release of Annual Increment:-<br>(i) W.e.f. 1.7.2005<br>(ii) W.e.f. 1.7.2006               | : | Rs. 12,175/-<br>Rs. 12,475/-                 |
| 10.     | Pay fixed on revised scale of Rs. 20,600-46,500/- w.e.f. 1.1.2007   | : | Rs/ 28,900/- (78.2%)<br>Rs. 27,380/- (68.8%) |
| 11.     | Pay revised on release of Annual Increment w.e.f. 1.7.2007  | : | Rs. 29,770/- (78.2%)<br>Rs. 28,210/- (68.8%) |
| 12.     | Pay raised on Post based promotion in the grade of SDE (Arch) in the Scale of (10) above w.e.f. 30.6.2008 | : | Rs. 30,670/- (78.2%)<br>Rs. 29,060/- (68.8%) |
| 13.     | Pay revised on release of Annual increment w.e.f. 1.7.2008  | : | Rs. 31,590/- (78.2%)<br>Rs. 29,940/- (68.8%) |



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|-----|---|---|---|
| 14. | Date of 2 <sup>nd</sup> IDA upgradation as per BSNL promotion Policy after 5 years  | : | w.e.f. 1.7.2009   |
| 15. | Scale of Pay on upgradation   | : | Rs. 24,900-50,500/-   |
| 16. | Basic pay prior to upgradation  | : | Rs. 31,590/- (78.2%)<br>Rs. 29,940/- (68.8%)                              |
| 17. | Pay Fixed on upgraded scale of (15) above after granting same amount of notional increment (Rs. 950- for 78.2%) & (Rs. 900/- on the basic pay i.e. for 68.8%) | : | Rs. 33,490/- (78.2%)<br>Rs. 31,740/- (68.8%)<br>With effect from 1.7.2009 |
| 18. | Pay revised on release of Annual increments:  |   |   |
|     | I. W.e.f. 1.7.2010  | : | Rs. 34,500/- (78.2%)<br>Rs. 32,700/- (68.8%)                              |
|     | II. W.e.f. 1.7.2011   | : | Rs. 35,540/- (78.2%)<br>Rs. 33,690/- (68.8%)                              |
|     | III. W.e.f. 1.7.2012  | : | Rs. 36,610/- (78.2%)<br>Rs. 34,700/- (68.8%)                              |
|     | IV. W.e.f. 1.7.2013   | : | Rs. 37,710/- (78.2%)<br>Rs. 35,750/- (68.8%)                              |

This issues with the concurrence of IFA of this office.

(Supriti Biswas)  
Chief Architect

10. On a careful analysis we have found that the respondents have said that the applicant who was a JTO (Arch.) in the pay scale of Rs. 9850-14600/-, completed 24 years of service as on 1.7.2009 and his financial upgradation under 2<sup>nd</sup> ACP would certainly be as SDE (Arch.) in the pay scale of Rs. 11875-17275/- in the aforesaid Scheme, as such, the question of paying him in the scale of Rs. 14500-18700/- to the applicant w.e.f. 16.8.2004 cannot be given and was given under bonafide mistake. The hierarchy with the pay scale of the Officers are shown as under:

- a) JTO (Arch.) - Rs. 9850-14600/-  
b) SDE/AE(Arch.) - Rs. 11875-17275/-

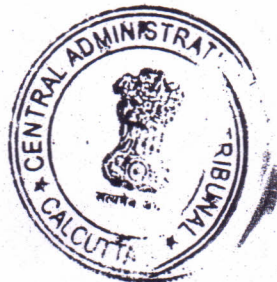


- c) Sr. SDE (Arch.) - Rs. 13000-18250/-  
 d) Architect - Rs. 14500-18700/-

11. It has been also admitted by the respondents that the scale was given to him erroneously by the Assam Telecom Circle in terms of clear guidelines issued by BSNL Corporate Office, New Delhi vide their order dated 10.7.2013.

12. We have also noted that the order dated 16.12.2010, issued by the office of the CGM, BSNL Assam Telecom Circle, has been considered erroneous in view of the clarification given by the BSNL Memo No 106-08/2013Arch/126 dated **10.7.2013** issued by the Corporate Office, the respondents have issued the rectification order No. CA/BSNL/KOL/5(1)/2009/250 Dated 18.6.2014, and taken consequential actions to recover the over-paid 'public money'. Since the rectification order was issued within three and a half year of the original erroneous order, we feel that the Respondents have also the legal right to recover the over-paid amount. We have also noted, that the applicant does not belong to Group C or Group D service, and the recovery has been effected from August, 2014 from the salary of the person, when he was in service. The applicant has since been superannuated.

13. Regarding the other officers being given the same benefit, it has been noted that nine of the officers in the list are SDE (Civil) and do not belong to the Architectural wing. As such, the ACP Scheme in different wings has different levels of pay determinations and are not comparable. The order dated



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10.7.2013 in case of the other officers namely, **Minaksee Roy, Mira Phukan and Arundhati Bordoloi who belong to SDE (Arch.)** has been analysed and enclosed and all the concerned officials have been directed to correct their mistakes accordingly. **In case of Smt. Minaksee Roy, Mira Phukan and Arundhati Bordoloi and the applicant all of them belong to JTO (Arch.) and their pay scales were also correct by orders dated 22.12.2010 and 8.9.2014 (a copy of which is annexed as Annexure R-13 and R-14).**

14. In view of the above, since Shri Dhanagopal Mukherjee belongs to JTO (Arch.) and was similarly placed along with Smt. Minaksee Roy, Mira Phukan and Arundhati Bordoloi, we do not find any case of discrimination, in view of the rectifications ordered in case of all the three officials.

15. Considering the matter in its entirety, we do not find any irregularity, infirmities or discrimination in the orders passed by the respondents and, as such, the O.A. along with the M.A. are rejected. No order as to costs..

*sdh*  
(R. Bandyopadhyay)  
MEMBER(A)



*sdh*  
(Bidisha Banerjee)  
MEMBER(J)

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(a) Sl. No. of the appin. 1567  
(b) Name of the applicant G. Mukherjee  
(c) Dt. of presentation or application for copy 21/1/15  
(d) No. of pages 13  
(e) Copying fee charges/urgent or ordinary 100  
(f) Dt. of preparation of copy 21/4/15  
(g) Dt. of delivery of the copy to the applicant 21/4/15

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स्वीकृत प्रति प्रमाणित

*[Signature]*  
Court Officer

केन्द्रीय प्रशासनिक अधिकारी

Central Administrative Tribunal

कलकत्ता न्यायपीठ

Calcutta Bench